

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1352 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF BABUBHAI HARISHANKER BHATT

Versus

MANJULABEN J MANIAR

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Appearance:

MR S.C. SHAH FOR MR. SN SHELAT for Petitioners  
MR DD VYAS for Respondent No. 1, 2, 3, 4, 5, 6

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 25/09/98

ORAL JUDGEMENT

This revision is directed against the order dated 31.3.1980 passed by the District Judge, Surat confirming the judgement and decree of eviction dated 29.4.1978 passed by the Additional Judge, Small Causes Court, Surat. The respondent plaintiff filed a suit for eviction of suit premises being Nondh No. 1569 of Ward No. 11, situated in Pagathia Sheri, Nanavat, Surat, on the ground of default in payment of rent. It is stated that the ground floor of the said premises was rented out to the petitioner-tenant on a monthly rent of Rs. 15/-. He gave a notice Exh. 22 dated 8.10.1973. The notice

was replied vide Exh. 26 dated 30.10.1973 raising the dispute regarding the standard rent. An application for fixing standard rent being No. 1387 of 1973 was filed on the same day. The suit was filed on 16.4.1974. In the written statement Exh. 12 a plea with respect to re-fixation of the standard rent was also raised.

During trial a controversy was raised to the effect that the defendant was barred from raising the issue with respect to the standard rent as the same was settled in the earlier suit being Regular Civil Suit No. 1487 of 1967. It was pointed out that standard rent was fixed at Rs. 15/- by a consent decree dated 7.9.1969 vide Exh.25. The trial court dismissed the suit by judgement and decree dated 30.10.1973. The trial court held that the standard rent dispute was decided in the previous suit, the same cannot be readjudicated and barred by res judicata. The trial court also found that the tenant was not ready and willing to pay the rent. In view of this, he decreed the suit by judgement dated 29.4.1978

The petitioner-tenant preferred an appeal before the first appellate court. The first appellate court in its judgement on the question of res judicata, held that the decree being a consent decree, the principles of res judicata will not apply. It was thus held that the defendant can agitate the question of standard rent. The court considering the case under Section 12(3)(b) that the petitioner tenant did not deposit the rent regularly and therefore he was not entitled to protection under the said provision. The appeal was accordingly dismissed by judgement dated 31.3.1980.

Mr. Shah appearing for the petitioner has invited my attention to para 13 of the judgement of the appellate court which shows that the amount deposited by the tenant petitioner on various dates. The learned counsel contends that the first appellate court committed an error in saying that the defendant failed to pay rent. He has taken me to each item and pointed out that in fact there was a deposit. Mr. D.D. Vyas has not been able to show as to how the defendant did not deposit the rent regularly. In view of the apparent error the judgement of the District Judge, Surat dated 31.3.1980 cannot be sustained.

In view of the aforesaid this Civil Revision Application is allowed and the order of the District Judge as well as the judgement and decree dated 29.4.1978 passed by the learned Additional Judge, Small Cause

Court, are quashed and set aside and the plaintiff's suit is dismissed. At this stage it is stated by the learned counsel appearing for the respondent that the petitioner has not deposited rent during the pendency of the revision. On the other hand Mr. Shah submits that the rent has been deposited. Be that as it may, if there is any rent due from the petitioner during the pendency of the revision, the same shall be paid or deposited within a period of three months from today. Rule made absolute to the aforesaid extent.

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